



JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

**Overview, Strategic Plan & Performance
Measures**

Lindy Frolich, Alternate Defense Counsel Director

Table of Contents

I.	Executive Letter	2
II.	Agency Overview	
	Organizational Chart	4
	Background	5
	Statutory Mandate	5
	Mission Statement	5
	Vision Statement	5
	Prior Year Legislation	6
	Hot Topics	7
	Cases that may affect OADC	11
	Work Load Indicators	14
III.	Agency Objectives and Performance Measures	
	Objectives and Strategies	16
	Core Objectives Performance measures	17



State of Colorado

Office of the Alternate Defense Counsel

Lindy Frolich, Director

www.coloradoadc.org

Denver Office
1580 Logan Street, #330
Denver, Colorado 80203
Phone: (303) 832-5300
Fax: (303) 832-5314

Western Slope Office
446 Main Street
Grand Junction, CO 81501
Phone: (970) 261-4244
Fax: (970) 245-8714

October 31, 2012

To the Citizens and Legislators of the State of Colorado:

Each person accused of a crime has a constitutional right to be represented by counsel at each critical stage of the action against him or her. This right only has meaning if counsel is competent, effective, and zealous. This constitutional right applies not only to the wealthy in the United States, but also to the poor. ***The Office of the Alternate Defense Counsel (OADC) was created by the Colorado Legislature (C.R.S. § 21-2-101, et. seq) to provide state wide representation in criminal and juvenile delinquency cases when the Office of the Public Defender has a conflict of interest and therefore cannot ethically represent the indigent defendant.*** The OADC has become a national model for indigent defense assigned counsel programs. Both the director and deputy director have been invited to other states to present the Colorado model for court-appointed counsel programs, and have worked with other states to initiate similar programs. OADC continues to explore and implement strategies to control case costs while providing effective court-appointed counsel.

Today, in every courtroom in Colorado, there are OADC contract lawyers available to accept court appointments. Before the creation of the OADC in 1996, there was no standardized method for court appointments. Lawyers were randomly appointed by the court and payments were administered by the Colorado State Public Defender's Office. An indigent defendant or juvenile delinquent might receive court-appointed counsel with little or no experience, or counsel with significant experience. There was no training, no oversight, and very little accountability.

During its formative years the OADC focused on establishing the infrastructure needed to develop a systematic method for appointing counsel. As the agency began formalizing the process of court-appointed counsel, the priority was to insure competent, qualified counsel state wide. Since its inception the agency has strived to provide competent, effective representation for indigent defendants while keeping administrative costs low.

From 1996 until 2006, the agency's case load increased from approximately 7,000 cases per year to more than 12,000. Once the infrastructure was well-established, the doors were open to explore ways to become more efficient. In order to keep administrative costs low and use state resources to pay contractors directly, the OADC began developing its automated payment system, WEBPAY, in FY2002. By FY2005, all regular contractors were billing on line and continue to do so today. The agency continues to refine this system to further simplify contractor billing while improving data collection. The agency continues to work toward a paperless billing system.

The OADC has identified those costs that are truly uncontrollable and delineated areas that can be impacted by increased efficiencies. At the beginning of the current budget crisis, in 2009, OADC immediately put into place additional cost saving measures. Many of these are listed in previous budgets as well as this budget. Through this budgetary crisis, OADC has kept case costs down and lawyer hours constant.

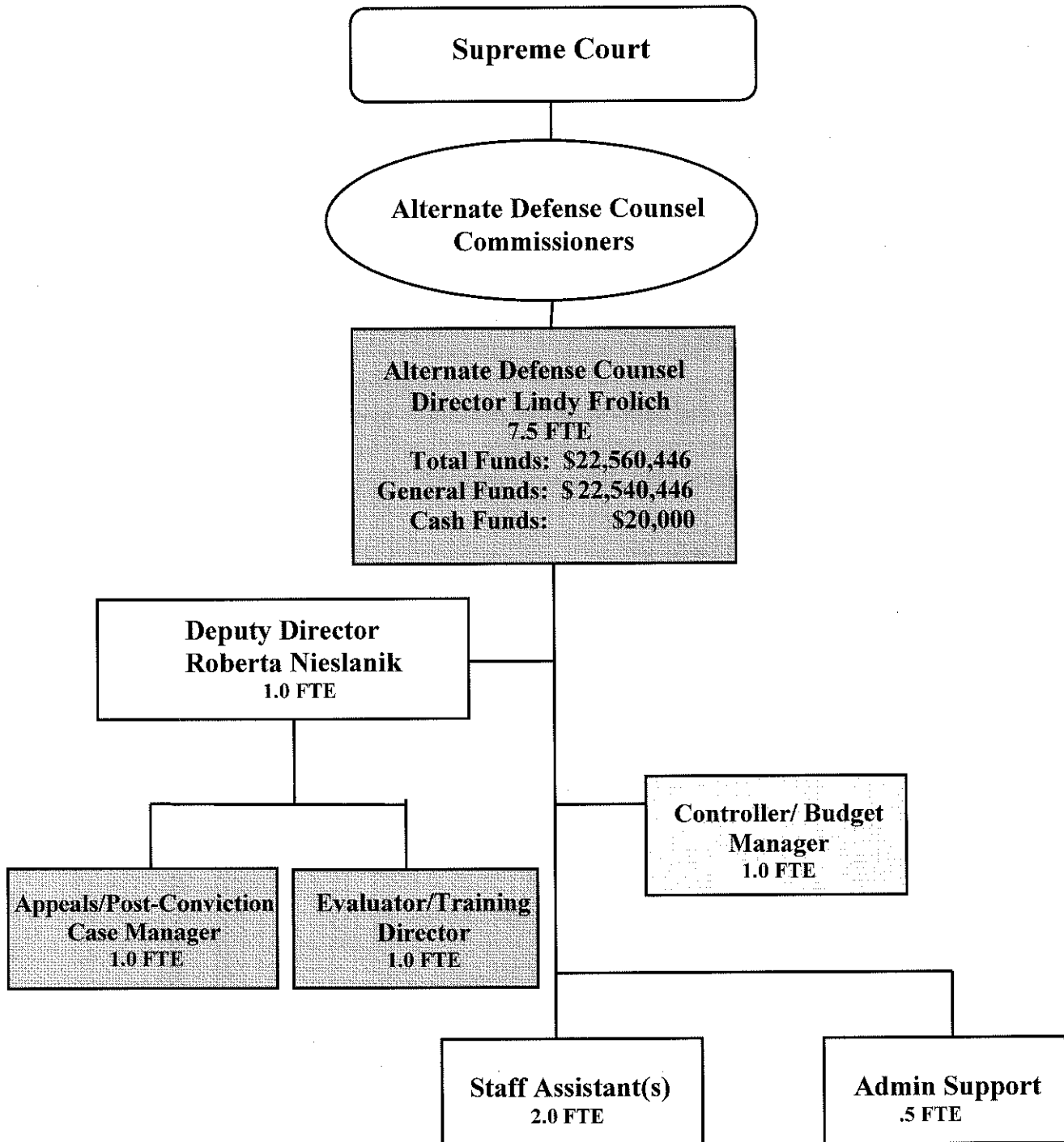
As part of this continuing effort to provide quality representation at a reasonable cost, OADC has begun a centralized system of legal resources and technology for its contractors. In order to institutionalize this system, the OADC is requesting 1.0 FTE, to create the position of Coordinator of Legal Resources and Technology, funded by an offset in the Conflict of Interest Contract service appropriation line item. The duties of this position will include: acquiring current criminal law information; maintaining the accuracy of that information; developing technologies to improve access to the information; remaining current on the technology necessary for access to the information; and disseminating the information to the OADC contractors. Our goal is to continue to explore new ways to reduce the cost of court-appointed counsel representation, while maintaining quality representation.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Lindy' followed by a stylized 'F' and 'm'.

Lindy Frolich
Director

II. Agency Overview
Organizational Chart
Judicial Branch
Office of the Alternate Defense Counsel



July 1, 2012

The Office of the Alternate Defense Counsel

Background

The United States and Colorado Constitutions provide every accused person with the right to be represented by counsel in criminal prosecutions. U.S. Const., amend. VI; Colo. Const., art. II, §16. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which incarceration is a possible penalty.

The Office of the Alternate Defense Counsel (OADC) was established pursuant to C.R.S. § 21-2-101, *et. seq.* as an independent governmental agency of the State of Colorado Judicial Branch. The OADC is funded to provide legal representation for indigent persons in criminal and juvenile delinquency cases in which the State Public Defender has a conflict of interest.

Statutory Mandate/Directive

The Office of the Alternate Defense Counsel is mandated by statute to "provide to indigent persons accused of crimes, *legal services that are commensurate with those available to non-indigents*, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association Standards relating to the administration of criminal justice, the defense function." C.R.S. § 21-2-101(1) (emphasis added).

Mission

The mission of the Office of the Alternate Defense Counsel is to provide indigent individuals (adults and juveniles) charged with crimes the best legal representation possible. This representation *must* uphold the federal and state constitutional and statutory mandates, ethical rules, and nationwide standards of practice for defense lawyers. As a state agency, the OADC strives to achieve this mission by balancing its obligation to provide effective counsel to the accused with its responsibility to the taxpayers of the State of Colorado. The OADC is committed to insuring that indigent defendants receive the best legal services available.

Vision

- ★ *To create an environment that promotes thorough evaluation, training, and technology, such that the Office of the Alternate Defense Counsel is recognized as a national leader in the delivery of competent and cost-effective legal representation to indigent defendants.*

PRIOR YEAR LEGISLATION

HB12-1271 - Juvenile Direct File Limitations

This act amended limited the offenses for which a juvenile may be subject to direct filing as an adult. The act also limits direct file cases to juveniles age 16 or 17. After a juvenile is charged in district court, the juvenile may petition the adult court for a reverse-transfer hearing to transfer the case to juvenile court. If, after a reverse-transfer hearing, the court finds that the juvenile and community would be better served by juvenile proceedings, the court shall order the case transferred to juvenile court. If, after a preliminary hearing, the district court does not find probable cause for a direct-file-eligible offense, the court shall remand the case to the juvenile court.

HB12-1213 - Escape From Community Corrections Program

A conviction for escape or attempted escape shall not be used for the purpose of adjudicating a person as a habitual criminal unless the escape or attempt to escape is from a county jail or a correctional facility.

HOT TOPICS

COST SAVING MEASURES:

Over the past several years, OADC has instituted several cost savings measures. Some of these include, paperless discovery, shared discovery resources in multi-codefendant Grand Jury cases, on site scanning of Department of Corrections records, district court files and files located at Public Defender offices throughout the state. In addition, OADC has developed and instituted an in-house case management system for appeals and post-conviction cases, and a one person interface system with all judicial districts clerks, court reporters and appellate courts staff members. Each of these measures has produced cost savings. The proposed Coordinator of Legal Research and Technology is a similar cost savings measure. The coordinated centralization and dissemination of reliable up-to-date legal research to all OADC contractors will increase cost savings.

EVIDENCE BASED SMARTER SENTENCING:

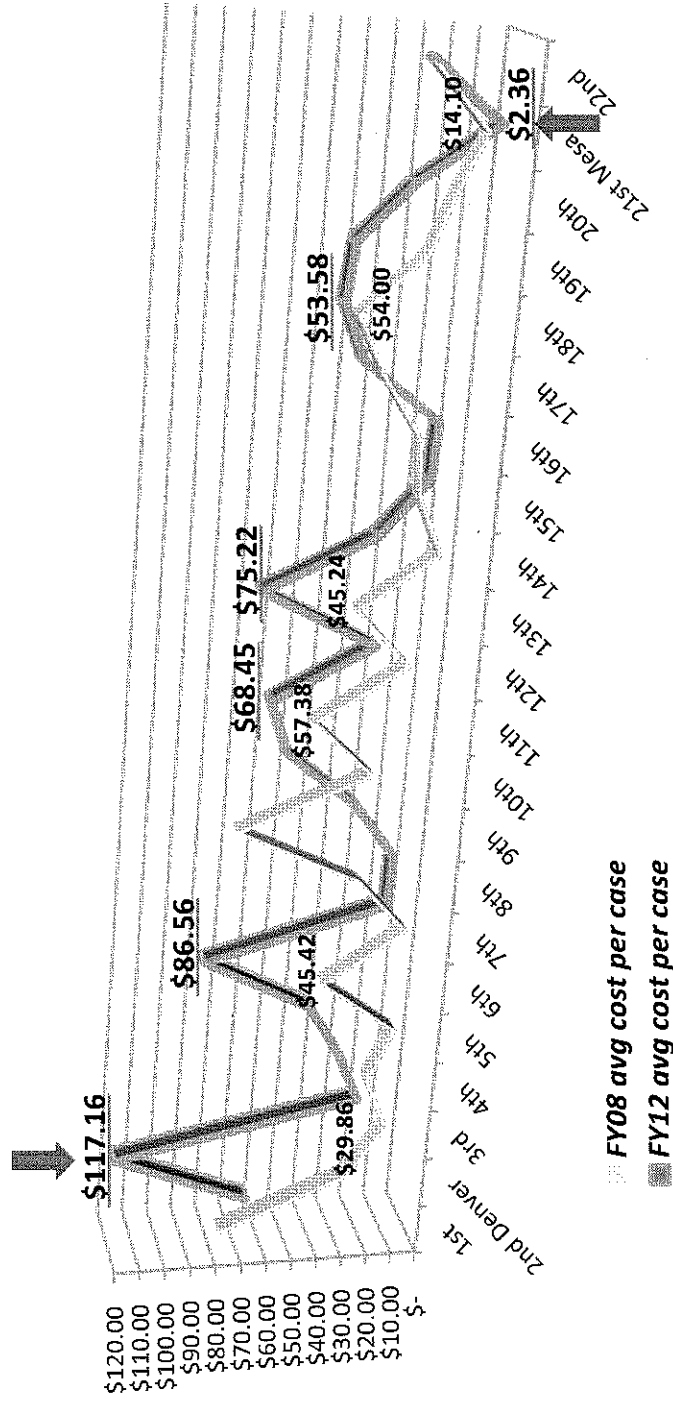
The 2011 Legislature addressed this issue in two ways: 1) by amending the sentencing statute; and 2) by changing the requirements of presentence reports issued by Probation Services. Evidence Based Decision Making (EBDM) in the criminal justice system is recognized across the nation for producing safer communities and more effectively using scarce resources. Colorado's Mesa County is in the implementation phase of the National Institute of Corrections (NIC) nationwide grant to participate in an intense EBDM plan. More information is available at <http://www.cepp.com/EBDM.OneLess/>.

OADC has a pilot sentencing project in Mesa County/21st Judicial District. This project includes specific training on EBDM and additional resources designed to use EBDM data and methods to promote smarter sentencing decisions. In addition, OADC has begun statewide training on this important topic and has made the social science research available in the Brief and Motions bank.

DISCOVERY:

The cost of discovery has been an ongoing issue for the past several years. The following chart and table demonstrate that the cost of discovery to OADC has significantly increased in some jurisdictions from FY2008 to FY2012. (Note – the 21st Judicial District is an electronic discovery system.)

**Average Cost of Discovery per Case Appointment
charged by Judicial District Attorney Office's for Fiscal Year 2008 compared to 2012**



Discovery Costs per District over the last five years

Jud District	Counties in District	Avg cost per appt FY07-08	Avg cost per appt FY08-09	Avg cost per appt FY09-10	Avg cost per appt FY10-11	Avg cost per appt FY11-12	% COST change from FY08-fy12
1st	Gilpin/Jefferson	\$ 78.13	\$ 65.01	\$ 65.72	\$ 61.74	\$ 62.60	-19.9%
2nd	Denver	\$ 29.86	\$ 32.74	\$ 35.68	\$101.84	\$117.16	292.4%
3rd	Huerfano/Las Animas	\$ 15.32	\$ 30.93	\$ 16.67	\$ 17.46	\$ 21.01	37.2%
4th	El Paso/Teller	\$ 24.78	\$ 25.12	\$ 31.57	\$ 25.76	\$ 30.27	22.2%
5th	ClearCreek/Eagle/Lake/Summit	\$ 15.75	\$ 32.45	\$ 22.18	\$ 26.71	\$ 44.10	180.0%
6th	Archuleta/La Plata/San Juan	\$ 45.42	\$ 51.85	\$ 20.65	\$ 43.32	\$ 86.56	90.6%
7th	Delta/Gunnison/Hinsdale/Montrose/Ouray	\$ 15.23	\$ 17.38	\$ 22.00	\$ 14.13	\$ 16.89	10.9%
8th	Jackson/Larimer	\$ 35.45	\$ 87.02	\$ 76.21	\$ 63.50	\$ 16.39	-53.8%
9th	Garfield/Pitkin/Rio Blanco/Glenwood	\$ 82.43	\$ 27.76	\$ 38.97	\$ 23.12	\$ 32.96	-60.0%
10th	Pueblo	\$ 34.18	\$ 43.40	\$ 54.99	\$ 50.40	\$ 60.65	77.4%
11th	Chaffee/Custer/Fremont/Park	\$ 57.38	\$ 89.39	\$101.35	\$ 80.04	\$ 68.45	19.3%
12th	Alamosa/Conejos/Costilla/Mineral/Rio Grande/Saguache	\$ 24.17	\$ 17.17	\$ 37.26	\$ 27.77	\$ 30.86	27.7%
13th	Kit Carson/Logan/Morgan/Phillips/Sedgwick/Washington/Yuma	\$ 45.24	\$ 48.23	\$ 59.61	\$ 69.05	\$ 75.22	66.3%
14th	Grand/Moffat/Routt (some attrny pay)	\$ 16.57	\$ 50.25	\$ 43.21	\$ 23.88	\$ 34.02	105.4%
15th	Baca/Cheyenne/Kiowa/Prowers	\$ 26.39	\$ 20.94	\$ 17.55	\$ 21.19	\$ 16.09	-39.0%
16th	Bent/Crowley/Otero	\$ 28.30	\$ 49.53	\$ 27.39	\$ 27.54	\$ 15.16	-46.4%
17th	Adams/Broomfield	\$ 43.08	\$ 43.00	\$ 41.64	\$ 48.24	\$ 44.63	3.6%
18th	Arapahoe/Douglas/Elbert/Lincoln	\$ 54.00	\$ 41.01	\$ 46.37	\$ 65.26	\$ 53.58	-0.8%
19th	Weld	\$ 31.72	\$ 36.41	\$ 41.22	\$ 47.01	\$ 51.61	62.7%
20th	Boulder	\$ 23.97	\$ 33.95	\$ 46.66	\$ 32.25	\$ 31.81	32.7%
21st	Mesa	\$ 14.10	\$ 15.26	\$ 20.40	\$ 8.95	\$ 2.36	-83.3%
22nd	Dolores/Montezuma	\$ 34.62	\$ 24.88	\$ 35.17	\$ 31.92	\$ 29.19	-15.7%
	Average cost per case appointment	\$36.25	\$39.16	\$43.21	\$50.07	\$48.35	33.4%

IMMIGRATION:

The number of post-conviction cases based on inadequate advisement regarding immigration consequences has increased, especially in light of *Padilla v. Kentucky*, 379 U.S. 759, 130 S.Ct. 1473 (March 31, 2010). The *Padilla* case mandates that criminal defense lawyers properly advise defendants of the possible immigration consequences related to their case. Immigration law is highly technical, specialized and constantly changing. Judges, prosecutors and defense lawyers are inadequately prepared to keep abreast of all the immigration consequences in criminal cases. The OADC continues to contract with a criminal defense lawyer who specializes in immigration law to consult with OADC contractors to insure compliance with *Padilla*.

JUVENILE LIFE WITHOUT PAROLE (JLWOP)

In the case of *Miller v. Alabama*, 132 S.Ct. 2455 (June 25, 2012), the United States Supreme Court held that it is unconstitutional to sentence juveniles charged as adults to a mandatory sentence of life without the possibility of parole. There are 51 individuals sentenced to a mandatory life without the possibility of parole for an offense that was committed when they were juveniles. The Office of the Alternate Defense Counsel has worked with the Colorado State Public Defender's office to determine which of these individuals could be represented by the state public defender's office for resentencing, and which cases required the appointment of OADC. This process has been completed, and OADC contractors have been assigned to each of the cases where the public defender's office has declared a conflict. In recognition of the unique nature of this United States Supreme Court mandate, the OADC has been actively working with the Colorado Juvenile Defender Coalition (CJDC) to insure that the OADC contractors are adequately trained and informed on how to handle these resentencing hearings.

CASES THAT MAY AFFECT OADC

DEFENDANT'S RIGHT TO COUNSEL ON FIRST ADVISEMENT

Rothgery v. Gillespie County, Texas, 128 S. Ct. 2578 U.S. (June 23, 2008). In *Rothgery*, the United States Supreme Court held that a criminal defendant's initial appearance before a judge marks the beginning of the proceedings against him and triggers the defendant's Sixth Amendment right to counsel whether or not a prosecutor is aware of or involved in that appearance.

PROHIBITION AGAINST SENTENCING JUVENILES TO LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE (JLWOP)

Graham v. Florida, 130 S.Ct. 2011 (May 17, 2010). The Eighth Amendment prohibits imposition of a life without parole (LWOP) sentence on juvenile offenders who did not commit a homicide. States are not required to release juvenile offenders during their lifetime; however, when juvenile non-homicide offenders are sentenced to LWOP, states must provide a meaningful opportunity for release.

Miller v. Alabama, 132 S.Ct. 2455 (U.S. June 25, 2012). The United States Supreme Court granted a new sentencing hearing to two state prisoners convicted of murders that occurred when the defendants were under 18 years of age. The Court held that a mandatory sentence of life without parole (LWOP) for juveniles who commit homicide is unconstitutional.

People v. Tate, 07CA2467 (Colo. App. September 13, 2012) (unpublished). The Court of Appeals found the JLWOP sentence unconstitutional, and remanded for a resentencing hearing pursuant to *Miller v. Alabama, supra*.

People v. Banks, 12CA157 (Colo. App. September 27, 2012) (published). The Court of Appeals found the JLWOP sentence unconstitutional, but remanded for the juvenile to be sentenced to life with the possibility of parole after 40 years.

SEARCH OF CELL PHONES

People v. Taylor, 12CA91 (Colo. App. June 7, 2012). Police searched the defendant's cell phone immediately after arresting him for participation in a controlled drug buy. The Court of Appeals expressed some concern regarding the scope of searches of personal devices containing large amounts of personal information but says that on the facts of this case (which included the lack of a password locking the phone) the search was reasonable.

INEFFECTIVE ASSISTANCE OF COUNSEL

IMMIGRATION CONSEQUENCES:

Padilla v. Kentucky, 397 U.S. 759, 130 S.Ct. 1473 (March 31, 2010). A habeas petitioner can bring a claim for ineffective assistance of counsel where he would not have pled guilty but for the failure of his attorney to advise him of the immigration consequences of the plea. An attorney's duties include advising a defendant about the collateral consequences of the plea. The attorney's failure to advise a non-citizen defendant of the immigration consequences of pleading guilty to a crime can constitute ineffective assistance of counsel under the Sixth Amendment.

People v. Kazadi, 11SC264 (Colo. Sept. 12, 2011). The defendant alleged that his counsel rendered ineffective assistance in not correctly advising him of the deportation consequences of his plea. Because he received a deferred judgment and conviction on the felony count, the Court of Appeals ruled that he could only challenge his misdemeanor conviction. *Certiorari* is granted on the question: "Whether a criminal defendant has the right to apply for post-conviction review of a deferred judgment pursuant to section C.R.S. §18-1-410, (2010) and Crim. P. 35(c)."

A number of trial court orders denying of post convictions motions have been reversed on appeal on the issue of faulty advisement of immigration consequences. *See: People v. Tolossa*, 11CA0148 (Colo. App. June 28, 2012) and *People v. Trevizo-Estrada*, 10CA2568 (April 19, 2012), (both reversing denial of 35(c) motions).

PLEA BARGAIN STAGE OF CASE:

Missouri v. Frye, 132 S.Ct. 1399 and *Lafler v. Cooper*, 132 S.Ct. 1376 (March 21, 2012). The Sixth Amendment right to the effective assistance of counsel extends to negotiation and consideration of plea offers. Conviction at trial does not necessarily preclude a finding of prejudice, but the issues of both prejudice and remedy are complex and case-specific.

RIGHT TO COUNSEL:

Martinez v. Ryan, 132 S.Ct. 1309 (March 20, 2012). "Where, under state law, ineffective-assistance-of-trial-counsel claims must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective."

DISCOVERY ISSUE

People v. Krueger, 12 CA 80, (Colo. App. May 10, 2012). A criminal defendant does not have a right to review all discovery materials. Counsel's decision to limit his access to selected discovery materials does not create a conflict warranting substitution of counsel.

CONFRONTATION CLAUSE ISSUES

Williams v. Illinois, 132 S.Ct. 2221 (June 18, 2012). The confrontation clause was not violated when a DNA expert testified about results of DNA testing performed by another analyst who did not testify. Cellmark lab analyzed DNA from a rape victim's swab and developed a male profile. The Cellmark employee did not testify and that report was not introduced. Instead, the analyst who analyzed the defendant's DNA sample testified that his DNA matched that sample tested by the Cellmark technician. Four justices held that this did not violate the Sixth Amendment, because the Cellmark report was not entered into evidence and was not admitted for the truth of the matter asserted but was rather used as a premise for the prosecutor's question. A fifth Justice rejected this analysis in its entirety but concurred based only on his view of what constitutes testimonial evidence. The four dissenters believed that the Cellmark report was offered for the truth of the matter asserted, was testimonial, and was a crucial link in the State's case and would find a confrontation clause violation.

People v. Casias, 12CA117, 2012 (Colo.App. July 19, 2012). The trial court did not abuse its discretion by requiring a defense expert to testify in person and not *via* video-conferencing.

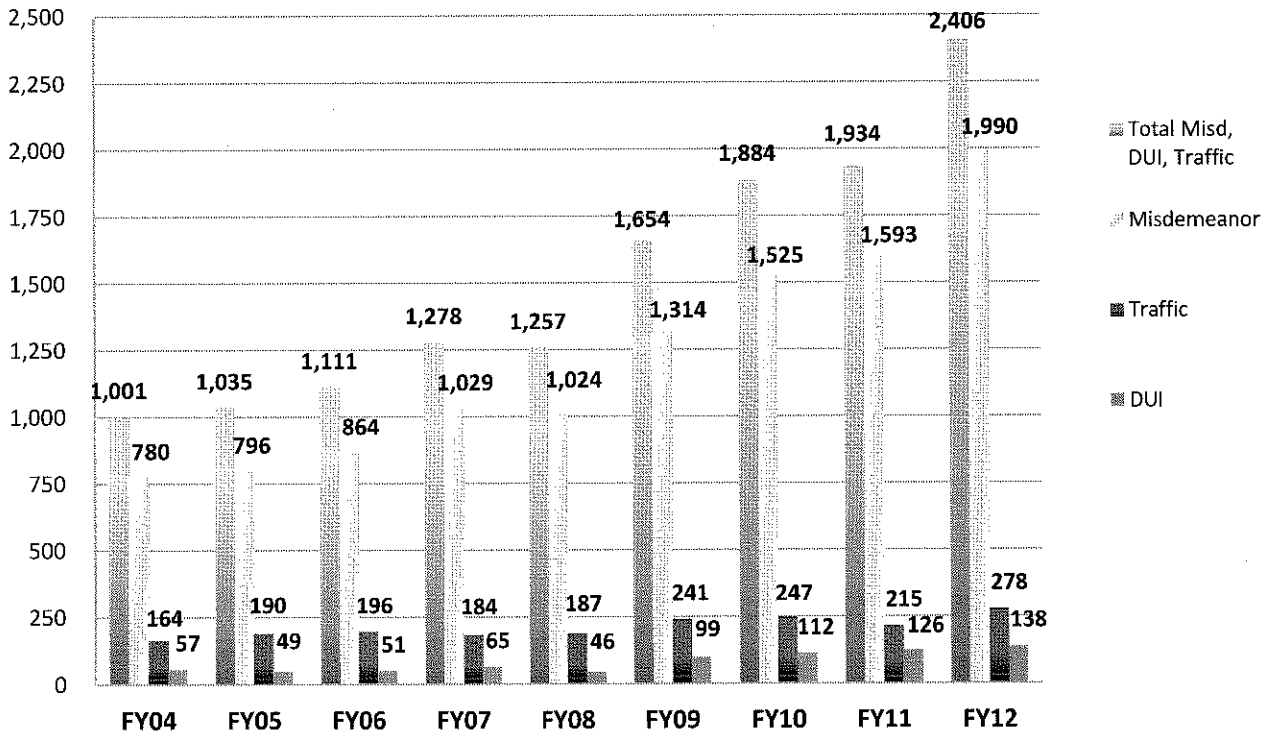
WORK LOAD INDICATORS

Additional information not previously noted:

Total Case Load and Case Type:

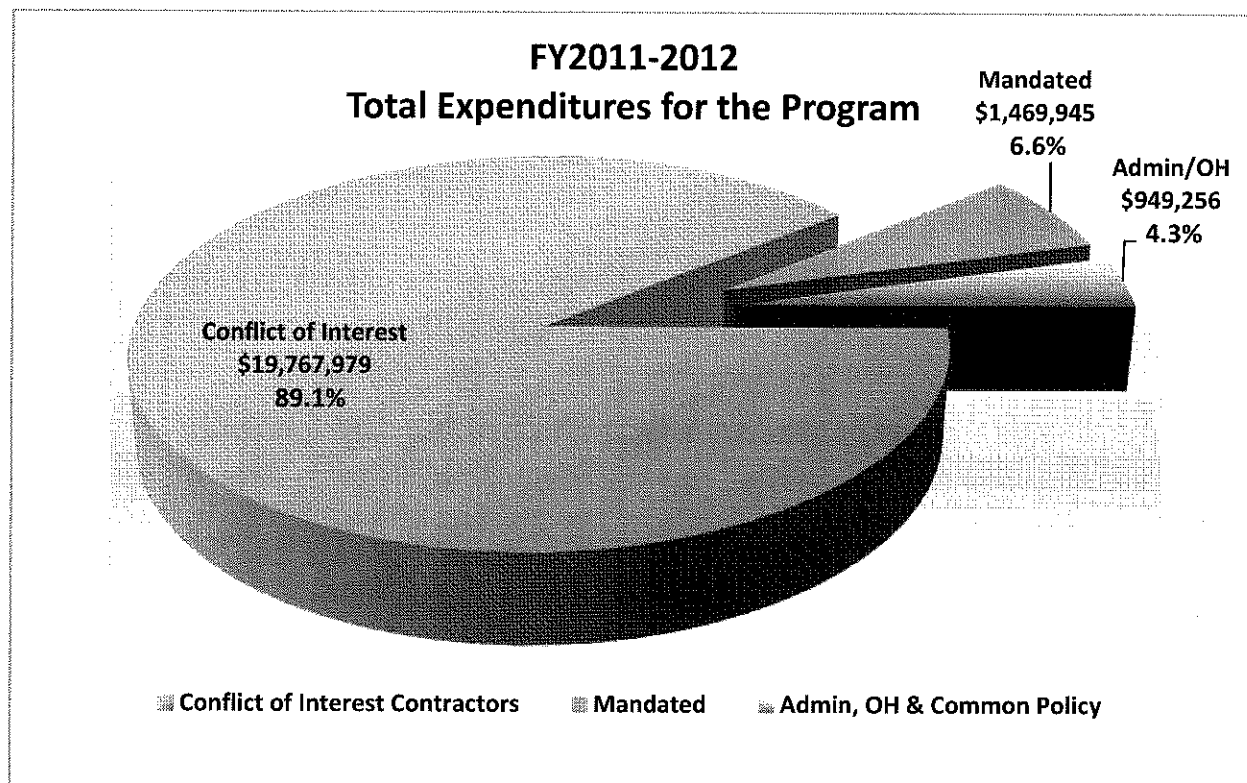
	Actual FY07	Actual FY08	Actual FY09	Actual FY10	Actual FY11	Actual FY12	Budget FY13	Request FY14
<u>Trial Case Types:</u>								
<i>F1 - Death Penalty</i>	5	4	4	4	3	2	4	2
<i>F1 - W/O Death Penalty</i>	128	150	145	145	126	111	128	108
<i>F2-F3</i>	2904	2642	2532	2604	2409	2323	2253	2398
<i>F4-F6</i>	5124	4372	4028	3894	3754	4064	4212	3976
<i>Juvenile</i>	1621	1528	1803	1808	1542	1496	1442	1558
<i>Misd DUI Traffic</i>	1278	1257	1654	1884	1934	2406	2047	2409
<i>Other</i>	6	2	2	2	1	1	0	0
Total Trial Cases	11,066	9,955	10,168	10,304	9,769	10,403	10,086	10,451
Appeal Cases	654	708	765	725	717	691	727	725
Post-Conviction Cases	514	523	492	489	429	471	487	488
Special Proceedings	855	896	1,049	1,040	963	1,020	1,001	1,029
Total Cases	13,089	12,082	12,474	12,594	11,878	12,585	12,301	12,693
% Inc/(Dec) Prior Year	6.3%	(7.7%)	3.2%	.9%	(5.7%)	6%	(2.3%)	3.2%

Detail of Misdemeanor, Traffic and DUI Case Increases



Total Case Payment Transactions Processed by the Agency:

	Actual FY07	Actual FY08	Actual FY09	Actual FY10	Actual FY11	Actual FY12	Budget FY13	Request FY14
Case Load	13,089	12,082	12,474	12,594	11,878	12,585	12,301	12,693
Payment Transactions	34,795	38,390	41,524	42,819	39,794	43,327	42,069	43,156
Avg. Case Transactions	2.66	3.18	3.33	3.40	3.35	3.44	3.42	3.40



III. Agency Objectives and Performance Plans

Objectives

I. PROVIDE COMPETENT LEGAL REPRESENTATION STATE-WIDE.

The OADC contracts with over 400 private lawyers across Colorado to represent indigent defendants where the public defender's office has a conflict of interest. Although each of these lawyers is an independent contractor, the OADC is committed to insuring that the representation is of the highest quality possible. The lawyer contractors utilize investigators, paralegals and experts, who are also independently monitored by the OADC.

II. PROVIDE COST-EFFECTIVE LEGAL REPRESENTATION STATE-WIDE.

The OADC has no control over the number of criminal cases filed or prosecutors' charging decisions. However, the OADC is constantly seeking ways to maintain or reduce the average cost per case.

Strategies

- Maintain current compensation rates for all contractors.
- Monitor and contain total hours per case and ancillary costs.
- Provide statewide training for lawyers, investigators, paralegals and court personnel.
- Provide cost effective research tools and resources to OADC contractors to make them more effective and efficient.
- Evaluate, monitor, and audit contractors on an ongoing basis.

Core Objectives & Performance Measures

Performance Measure A.		FY06 Actual	FY07 Actual	FY08 Actual	FY09 Actual through FY12	FY13 Budget	FY14 Request
Maintain compensation rates for contractors. Initial goal set in FY2004-2005 was to reach competitive rates by FY2008-2009 of \$75 per hour.	Target	\$55	\$60	\$68	\$75	\$75	\$75
	Actual	\$47 No funding received for rate increase	\$57	\$60	\$65	Status Quo	\$65

The American Bar Association (ABA) standards require that court-appointed attorney compensation be “reasonable” and “adequate.” The federal courts have indicated that they believe courts should pay court-appointed attorneys a rate that covers overhead and provides reasonable remuneration.

In FY2004, the Joint Budget Committee recommended that the judicial agencies work together to have Court Appointed Counsel hourly rates consistent within the judicial branch. In fiscal year 2004-2005, a judicial department study recommended an hourly rate of \$71.00 per hour for attorney contractors. Because of the great disparity between \$47 per hour and \$71 per hour, the JBC recommended a five year implementation plan to secure a rate of \$75 per hour. The agencies have continued to pursue these hourly increases as the State of Colorado general fund has allowed. The OADC is not requesting an hourly rate increase for fiscal-year 2013-2014 due to the current state of the economy.

As lawyers gain experience they are able to increase their private client base, where they may be paid anywhere from \$150 to \$350 per hour. This makes them less willing to accept court appointments. In an effort to at least maintain the current hourly rate, the OADC continues to seek alternative solutions to control its expenditures. These efforts include contract fees for most post-conviction and some appellate cases; curtailing some expert costs; increased monitoring of investigator and paralegal requests; expanding the brief and motions bank; providing expert research assistance and legal motion drafting as requested. The disparity between the private hourly rate and the OADC \$65 hourly rate continues to deter some attorneys from contracting with the OADC.

Evaluation of Prior Year Performance:

For the last four fiscal years, the OADC has not requested a rate increase due to the uncertainty of the economy and state budget shortfalls. The minimal rate increases in prior years has assisted with recruitment and retention of competent lawyers. Assuming the economy continues to improve, OADC anticipates requesting a rate increase in Fiscal Year 2014-2015.

On January 1, 2010, the federal government raised its court-appointed attorney’s¹ hourly rate to \$125 per hour and for capital crime (death penalty) cases, the new hourly rate is \$178 per hour.

¹ Federal court-appointed attorneys are referred to as Criminal Justice Act (CJA) lawyers.

Key Indicators:

State of Colorado Felony Type	Hourly Rate Effective 1/1/1991	Hourly Rate Effective 7/1/1999 ₁	Hourly Rate Effective 2/1/2003 ₁	Hourly Rate Effective 7/1/2003 ₁	Hourly Rate Effective 7/1/2006 ₁	Hourly Rate Effective 7/1/2007 ₁	Hourly Rate Effective 7/1/2008 ₁
Death Penalty	\$40 out court \$50 in-court (\$41.66) ²	\$65	\$60	\$65	\$85	\$85	\$85
Felony A	\$40 out court \$50 in-court (\$41.66) ²	\$51	\$46	\$51	\$60	\$63	\$68
Felony B	\$40 out court \$50 in-court (\$41.66) ²	\$47	\$42	\$47	\$56	\$59	\$65
Juv, Misd, DUI, Traffic	\$40 out court \$50 in-court (\$41.66) ²	\$45	\$40	\$45	\$54	\$57	\$65

1 In court and out of court are paid at the same rate.

2 Based on the ABA standard (for every 6 hours worked 1 hour is in-court and 5 hours are out-of-court).

CJA Rates	Hourly Rate Effective 1984	Hourly Rate Effective 1/2000	Hourly Rate Effective 4/2001	Hourly Rate Effective 5/2002	Hourly Rate Effective 1/2006	Hourly Rate Effective 5/2007	Hourly Rate Effective 1/2008	Hourly Rate Effective 3/2009	Hourly Rate Effective 1/2010
Death Penalty	4/24/96 \$125			2/1/2005 \$160	\$163	\$166	\$170	\$175	\$178
Non- Capital	\$40 out court \$60 in-court (\$43.33) ²	\$50 out court \$70 in-court (\$53.33) ²	\$55 out court \$75 in-court (\$58.33) ²	\$90	\$92	\$94	\$100	\$110	\$125

State of Colorado Attorney General rate-blended rate Attorney/Paralegal/Legal Asst.	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13
Legal Service Rate	\$59.80	\$60.79	\$61.57	\$64.45	\$67.77	\$72.03	\$75.10	\$75.38	\$73.37	\$75.71	\$77.25

Performance Measure B.		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Projection	FY14 Request
Contain the total number of Attorney hours per case. Includes all case type hours.	Target Attorney hours	19.64	19.64	19.64	19.64	19.64
	Actual	20.81	19.22	18.91		
Contain the total Attorney hours per case excluding Death Penalty cases.	Target Attorney hours	18.65	18.65	18.65	18.65	18.65
	Actual	18.93	16.96	16.78		
Contain the total Attorney hours per Death Penalty case.	Target Attorney hours	2,362.27	2,362.27	2,362.27	2,697.46	2,697.46
	Actual	1,843.97	1,936.80	2,697.46		
Contain the total Attorney hours per Type A Felony case.	Target Attorney hours	46.47	46.47	46.44	46.44	46.44
	Actual	49.74	44.46	44.76		
Contain the total Attorney hours per Type B Felony case.	Target Attorney hours	15.48	15.48	15.48	15.48	15.48
	Actual	16.45	14.73	14.81		
Contain the total Attorney hours per Adult Misdemeanor/Juvenile.	Target Attorney hours	7.81	7.81	7.24	7.24	7.24
	Actual	7.26	6.96	7.20		
Keep ancillary costs per case to a minimum.	Target Ancillary	\$119.73	\$119.73	\$124.07	\$120.38	\$120.38
	Actual	\$120.16	\$120.38	\$116.80		

Strategy:

The OADC reviews each individual contractor bill for reasonableness and accuracy. In an effort to increase the quality and efficiency of the OADC contract attorneys, the agency has implemented and will continue to seek out measures that will reduce billable contractor hours and associated ancillary costs. These measures include:

1. Continuing the in-house appellate case management system that streamlines the OADC appellate cases from inception through transmittal of the record on appeal.
2. Continuing the in-house post-conviction case management system to include triage and per case fee contracting.
3. Contracting with document management and paralegal professionals who specialize in organization and distribution of discovery in Colorado Organized Crime Control Act (COCCA) cases, death penalty cases, and other voluminous cases.
4. Attorney access to electronic court records pursuant to HB 08-1264.

5. Expanding and promoting the Brief and Motions bank.
6. Providing expert legal research and legal motion drafting assistance.
7. Evaluating contractor efficiency and auditing contractor billing.
8. Closely monitoring expert requests.
9. Coordinating cost reduction methods for electronic discovery charged by individual district attorney offices across the state.

Evaluation of Prior Year Performance:

As you can see from the above tables, the agency has reduced the number of billable hours per case. The implementation of cost saving measures as listed in the following paragraphs has reduced attorney billable hours:

Legal Resources and Technology: The OADC Brief and Motions bank, coupled with the legal research assistance to OADC contractors, are creating a centralized system of legal resources and technology available to all contractors to reduce duplication of efforts.

Discovery: The OADC continues to provide electronic distribution of discovery in certain cases. Contracting with document management and paralegal professionals has allowed the OADC to take several thousand pages of paper discovery (costing a minimum of fifteen cents and up to fifty cents per page to reproduce), and reduce it to one or two compact disks, costing very little to reproduce.

Although the use of modern technology has reduced the distribution cost of discovery in complex cases, the discovery costs paid to most district attorneys' offices statewide continues to increase.

Electronic Access to Court Records: OADC lawyers continue to benefit from access to electronic court records.

Appellate and Post-Conviction Cases: The agency has successfully reduced the number of attorney hours per case for appellate and post-conviction appointments. The agency's former appellate paralegal pilot program has transitioned to an appellate case management position, and now also includes case management for post-conviction cases. In addition to reducing the number of hours per case, this has dramatically shortened the time that post-conviction cases are open, by providing the attorneys with significant information regarding the case upon appointment. Feedback from OADC contractors, court clerks and judges has all been positive.

Evaluation and Auditing of Contractors: The OADC continues to audit individual contractors to analyze their billing procedures and patterns. The OADC has tailored trainings to address time management inefficiencies to reduce the number of hours per case.

Death Penalty: Capital cases are the most expensive case class. This includes lawyer time, investigator time, paralegal time, and all other ancillary costs. As long as there is a death penalty in Colorado, and OADC has a case, it will be expensive.

There is currently one death penalty case pending on the trial court level. The defendant is represented by OADC contractors. There are two death penalty cases proceeding under the Unitary Appeal Bill, and both defendants are represented by OADC contractors.

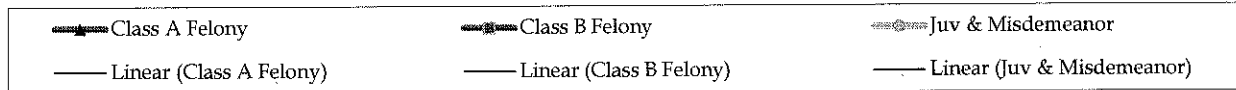
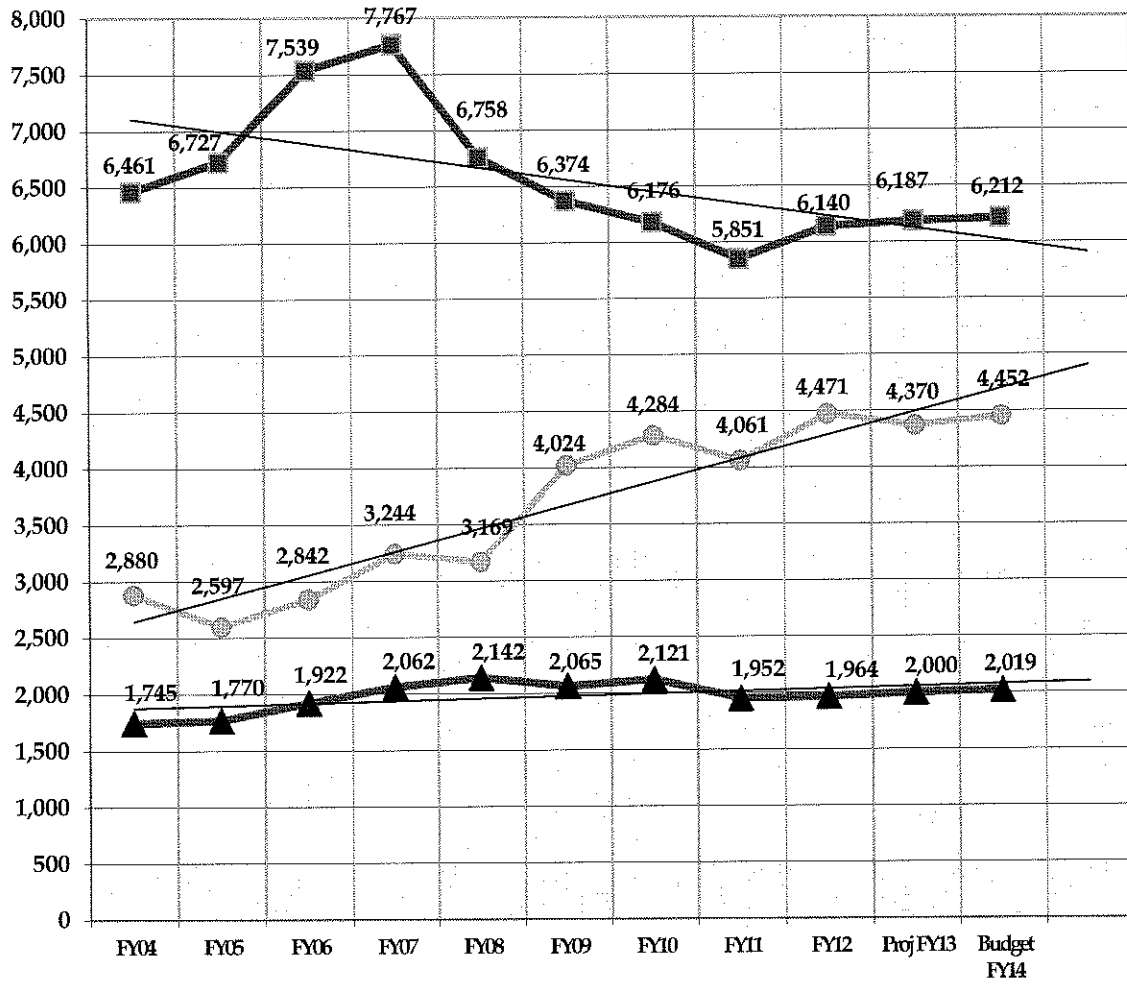
All of these death penalty cases arise out of prosecutions from the 18th Judicial District.

Key Workload Indicators:

The following table includes trial, appellate, post-conviction and special proceedings grouped by felony class type.

	Actual FY07	Actual FY08	Actual FY09	Actual FY10	Actual FY11	Actual FY12	Budget FY13	Request FY14
<u>Death Penalty</u>								
Cases	16	13	11	13	14	10	13	10
Attorney Hours	9,371	13,516	20,521	23,972	27,115	26,974	26,847	26,974
<u>Type A Felonies</u>								
Cases	2,062	2,142	2,065	2,121	1,952	1,964	1,999	2,019
Attorney Hours	94,454	104,256	109,497	105,497	86,788	87,907	92,834	93,762
<u>Type B Felonies</u>								
Cases	7,767	6,758	6,374	6,176	5,851	6,140	6,005	6,212
Attorney Hours	122,681	104,954	97,180	101,578	86,194	90,194	92,957	96,162
<u>Adult, Misd, Juv</u>								
Cases	3,244	3,169	4,024	4,284	4,061	4,471	4,284	4,452
Attorney Hours	26,699	23,610	29,141	31,091	28,245	32,200	31,023	32,232
Total Cases	13,089	12,082	12,474	12,594	11,878	12,585	12,301	12,693

Case Load by Case Type



Performance Measure C.		FY11 Actual	FY12 Actual	FY13 Estimate	FY14 Request
Sponsor X number of trainings annually for attorneys, investigators, paralegals, and court personnel.	Target	10	10	12	12
	Actual	12	12		

Strategy:

Based on the Performance audit of 2006 the agency recognized the need for additional evaluation, monitoring and training of contractors. Since then the agency has developed three basic components to its training program.

1. Assess and determine the types of training needed for OADC contractors and court personnel.
2. Organize and present continuing legal education training for OADC lawyers, investigators, and paralegals.
3. Facilitate access to trainings by in-person attendance, DVD reproduction, and web broadcasting.

Evaluation of Prior Year Performance:

The OADC met and exceeded its training program target. The attendance at the trainings surpassed expectations and feedback was excellent. The agency was able to train on a variety of subjects that concern its contractors. For contractors who are unable to attend in-person, most trainings are Webcast and accessible to anyone with a high speed internet connection.

During FY2012, the OADC recognized a need to provide increased technology training for its contractors, and provided hands on training in technology tools such as Adobe Acrobat Professional for use with electronic discovery and transcript review.

Key Workload Indicators:

	Actual FY11	Actual FY12	Estimate FY13	Budget FY14
Death Penalty Training	13 hours 20 Attendees	15 hours 32 Attendees	16 hours 35 Attendees	
Appellate Training	15 hours 75 Attendees	4.5 hours 34 Attendees		
Client-Centered Representation	6 hours 45 Attendees		6 hours 60 Attendees	
Ethics for Lawyers	6 hours 75 Attendees	5 hours 40 Attendees		5 hours 30 Attendees
Trial Practice Institute	35 hours 35 Attendees	39 hours 32 Attendees	35 hours 35 Attendees	35 hours 35 Attendees
Juvenile Training	18.5 hours 230 Attendees	4 hours 8 sessions 260 Attendees	3 hours 4 sessions 100 Attendees	3 hours 5 sessions 75 Attendees
Post-Conviction Training	3 hours 35 Attendees	2 hours 14 Attendees	3 hours 40 Attendees	7 hours 40 Attendees
Investigator Training	12 hours 125 Attendees		6 hours 75 Attendees	6 hours 45 Attendees
Sentencing	4.5 hours 25 Attendees		6 hours 50 Attendees	6 hours 2 sessions 50 Attendees
Habitual Criminal		4.25 hours 53 Attendees		
Jury Selection Workshop		12 hours 22 Attendees	12 hours 35 Attendees	
Adobe Prof. Training		1.5 hours 30 sessions 143 Attendees	1.5 hours 8 sessions 60 Attendees	2 hours 6 sessions 25 Attendees
Time Management/Efficiency	3 hours 76 Attendees	2.5 hours 16 Attendees		
Paralegal Training	3 hours 30 Attendees	4 hours 2 sessions 60 Attendees	8 hours 50 Attendees	4 hours 25 Attendees
Story Telling Workshop	24 hours 15 Attendees	10 hours 4 sessions 23 Attendees		
Communication for Trial Lawyers		6 hours 10 Attendees		6 hours 10 Attendees
Criminal Law Update		2 hours 8 sessions 285 Attendees	2 hours 8 sessions 200 Attendees	2 hours 8 sessions 200 Attendees
Train the Trainers			15 hours 25 Attendees	15 hours 25 Attendees
Organized Crime Act				5 hours 25 Attendees

Performance Measure D.		FY11 Actual	FY12 Actual	FY13 Approp.	FY14 Request
Provide Cost-Effective Research Tools and Resources to ADC Contractors	Target	Maintain and increase content in brief and motions bank by 10%. Ongoing training on use of brief and motions bank.	Update and improve brief bank. 40% increase in monthly users.	Continue to populate and update brief and motions bank, and populate 80% of the browse categories. Train contractors on use. 20% increase in monthly users.	Continue to populate and update brief and motions bank and populate 100% of existing browse categories. Add categories as needed. Increase usage to 50% of OADC contractors.
	Actual	Over 2,700 documents. Average users per month: 95.	Over 3,000 documents. Average users per month: 161.		
Provide legal research assistance	Target	N/A	30 cases	60 cases	120 cases
	Actual	N/A	47 cases		
Provide monthly summaries of new opinions.	Target	N/A	N/A	Quarterly summaries	12 monthly summaries
	Actual	N/A	N/A		

Strategy:

To advance quality and efficiency in OADC contractors, the agency recognized the need for providing cost-effective research tools and resources. To accomplish this, the agency is:

1. Improving and expanding the Brief and Motions bank.²
2. Providing legal research and motion drafting assistance to contractors.
3. Providing timely case law summaries of new criminal legal opinions issued by the Colorado Court of Appeals and the Colorado Supreme Court.
4. Analyzing and introducing best practice applications to OADC contractors.

Evaluation of Prior Year Performance:

In FY2012, the Bank grew to over 3,000 documents, broken down into searchable categories. The agency has also recognized a need for legal research and drafting assistance. Since the agency notified its contractors that this assistance was available, numerous contractors have used this resource.

Preliminary responses indicate the likelihood of success for this program. The following comment comes from a contractor who has over 20 years of criminal defense experience: "Thank you very much for your help, it saved me a day's worth of research."

Key Workload Indicators: As noted above.

² The Brief and Motions Bank is an electronic data base containing high quality briefs and motions that have been indexed by topic. OADC contractors can use this resource as a starting point to efficiently address important legal issues in their cases.

Performance Measure E.		FY11 Actual	FY12 Actual	FY13 Approp.	FY14 Request
Interview contract applicants; evaluate contractors prior to contract renewal date, and ongoing performance monitoring. Contract with investigators.	Target Attorney	100%	100%	100%	100%
	Actual	99%	98%		
	Target Investigator	100%	100%	100%	100%
	Actual	87%	99%		

Strategy:

Pursuant to the state performance audit of 2006, the OADC began a process to insure that all OADC lawyers and investigators are under a current contract. This process includes interviewing and evaluating all attorney contractors and contracting with investigators. To accomplish this, the agency has developed 7 basic components:

1. Maintain a tracking system for all attorney and investigator vendors that include contract renewal dates.
2. Contact and request renewal applications from attorney contractors, interview and evaluate contractors, and renew contracts if appropriate.
3. Receive feedback from judicial districts concerning OADC lawyers.
4. Verify attorney status with the Office of Attorney Regulation.
5. Monitor and evaluate lawyer court room practices.
6. Mandate training and testing for investigators prior to contract issuance or renewal.
7. Conduct audit and time-efficiency studies of select OADC contract attorneys.

Evaluation of Prior Year Performance:

As the numbers above indicate, the agency has essentially interviewed and approved or denied contracts with all contract attorneys and investigators. All attorneys are on a contract renewal cycle. The agency also has a procedure in place to process applications from new attorneys and investigators. The State of Colorado does not have a formal licensing procedure for private investigators, nor does it appear that it will in the near future. Based on this, OADC has developed training and screening/testing process to be used prior to issuance or renewal of investigator contracts. Full implementation of the training and screening/testing process was initiated in FY2012. OADC met its performance goal for investigator contracting in FY2011-12.

Key Workload Indicators:

	Actual FY11	Actual FY12	Budget FY13	Request FY14
Anticipated Attorney contracts (new/renewals)	174	121	130	157
Attorney Contracts Completed	160	90		
Attorney Contracts Incomplete	6	7		
Total Agency Attorney Contractors	417	383		
Anticipated Investigator contracts (new/renewals)	45	72	17	12
Investigator Contracts Completed	19	75		
Investigator Contracts Incomplete	16	1		
Total Agency Investigator Contractors	124	106		

